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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 10, 2012 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcountry.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (7)

ALLEGATIONS, FINDINGS & RATIONALE

10-119

1. Criminal Conduct - Deputy 1 assaulted the complainant at a Starbucks in Vista on October 16, 2010.

Board Finding: Summary Dismissal

Rationale: Deputy 1 was not in a duty status during this incident. The following CLERB Rules & Regulations apply to this incident: 4.1, Citizen Complaints: Authority and 4.2, "Misconduct". The rules require that the alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen arise out of the performance of the Peace officer's or custodial officer's official duties or while under the exercise of Peace officer authority. Deputy 1 was off-duty at the time of the incident and therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 deliberately delayed child custody exchanges on December 5, 2010, causing the complainant to be late for work.

Board Finding: Summary Dismissal

Rationale: Deputy 1 was not in a duty status during this incident. The following CLERB Rules & Regulations apply to this incident: 4.1, Citizen Complaints: Authority and 4.2, "Misconduct". The rules require that the alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific

citizen arise out of the performance of the Peace officer's or custodial officer's official duties or while under the exercise of Peace officer authority. Deputy 1 was off-duty at the time of the incident and therefore the Review Board lacks jurisdiction.

3. Misconduct/Procedure – Deputy 2 deliberately delayed child custody exchange on December 5, 2010, causing the complainant to be late for work.

Board Finding: Action Justified

Rationale: Deputy 2 denied deliberately delaying a child custody exchange on December 4, 2010. Deputy 2 was dispatched to the scene to preserve the peace during the child custody exchange. The complainant reported that there are no established procedures designating which parent would initiate the child custody exchange. Deputy 2 received the dispatch at 5:15 pm and arrived on scene at 5:19 pm. Deputy 1 was already present and the complainant arrived at 5:30 pm. Neither party initiated action to conduct the exchange for approximately 10 minutes until Deputy 1 exited his vehicle and approached the complainant. Deputy 2 reported that the exchange was completed without incident by 5:45 pm. The evidence shows that Deputy 2 maintained order during the custody exchange and the alleged conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 3 failed to properly investigate and/or take action with respect to complaints against Deputy 1's conduct.

Board Finding: Action Justified

Rationale: Deputy 3 acknowledged receipt of two letters from the complainant in 2009 which prompted three letters in response to address the complainant's issues. The most recent response to the complainant's August 2011 communication noted that the Sheriff's Department would not reopen issues already addressed, and referred one issue to the appropriate Sheriff's Department unit for investigation. The complainant acknowledged that she had been contacted by unit investigators and opted not to press further charges. The evidence shows the alleged conduct did occur but was lawful, justified and proper.

10-122

1. Misconduct/Discourtesy – Deputy 3 was loud, vulgar and told the complainant to, “get the hell out of this office!”

Board Finding: Not Sustained

Rationale: Deputy 3 and a witness denied Deputy 3 used the verbiage described by the complainant. The complainant and involved personnel offered differing accounts of what was said and the responding actions that occurred during this incident. Videotape evidence did not include verbal recordings. There was insufficient evidence to either prove or disprove the allegation.

2. Illegal Search & Seizure – Deputy 5 grabbed the complainant's arm to detain him, contradicting orders given by Deputy 3.

Board Finding: Action Justified

Rationale: After attempting to assist the complainant and being unable, Deputy 3 provided instruction and told him to leave the courthouse. Deputies and a witness described the complainant's responding behavior as angry, loud, argumentative, agitated, and confrontational. The complainant said that Deputy 5 gave him a “push in the back” while Deputy 5 said the complainant stopped abruptly and he made slight contact with the complainant's arm in his effort to avoid walking into him. This minute action seemingly escalated the complainant's tension and Deputy 5 responded in kind, with hands-on control to guide the complainant from the building. Videotape evidence supported actions expressed by both parties. Deputy 5's conduct was lawful, justified and proper.

3. Excessive Force – Deputies 1-7 grabbed the complainant and took him to the floor causing injuries.

Board Finding: Action Justified

Rationale: Deputy 5 initiated physical contact with the complainant to escort him from the courthouse. The complainant said he pulled away from Deputy 5's grasp and continued on his way. He then attempted to defend himself when grabbed by Deputies 4 and 5. Videotape evidence corroborated hands on contact between the complainant and Deputies 4 and 5, however, they then moved out of camera range. Deputies 1, 2, 3, 6, and 7 responded to a request for "Cover Now!" Deputies reported, under threat of Taser use, the complainant complied with their orders and was handcuffed. The complainant was taken to a hospital and medically treated for contusions and lacerations. The complainant's reported behavior caused a disturbance, compromised courthouse security, and delayed deputies from carrying out their assigned duties. The deputies' conduct was lawful, justified and proper.

4. False Arrest – Deputy 5 arrested the complainant and charged him with four felony counts of resisting arrest.

Board Finding: Action Justified

Rationale: Deputies 3, 4, 5 and 7 suffered injury as a result of this incident. The complainant was arrested for PC§ 69, Obstructing/Resisting Executive Officer. The complainant said he went to court, took a plea to reduce the felony charge to a misdemeanor, and pled guilty. The evidence shows the alleged act or conduct did occur and was lawful, justified and proper.

5. Misconduct/Truthfulness – Deputies 1-7's reports pertaining to this incident are inaccurate and/or untruthful.

Board Finding: Not Sustained

Rationale: The complainant objects to the actions and events leading to his arrest and reported the following as mistruths - Deputy 5 reported he tried to avoid the complainant but "brushed by him accidentally," and the complainant balled up his fists. Again, the complainant and involved personnel offered differing accounts of what was said and the responding actions that occurred during this incident. Deputies declared their reports to be accurate and truthful. There was insufficient evidence to either prove or disprove the allegation.

10-124

1. Misconduct/Discourtesy – Deputies 5 and 2 were rude to the complainant and his mother, telling the complainant, "Your mom is fucking crazy."

Board Finding: Not Sustained

Rationale: Deputies 5 and 2 denied being rude to the complainant and making this reported statement. Arresting Deputy 1 denied hearing any deputies on scene make this particular statement. In the absence of independent witnesses and/or audio recordings, there is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy - Deputies 5 and 2 asked the complainant's mother, "What the hell were you doing on the roof anyway?"

Board Finding: Not Sustained

Rationale: Deputies 5 and 2 denied asking the complainant's mother this question as specifically alleged. Deputy 5 vaguely recalled asking the complainant's mother what she was doing on the roof to determine if she was a danger to herself, but denied using the word "hell" in his question. Witness Deputy 1 initially stated that both Deputies 5 and 2 were heard asking the question as alleged by the complainant, but in a follow-up questionnaire, could not recall if both deputies asked the question and he was not certain that the word "hell" was specifically used. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy - Deputies 5 and 2 attempted to antagonize the complainant and goad him into "doing something stupid" by repeatedly asking, "What's wrong with your mother?" and stating "Don't puff up with me!"

Board Finding: Not Sustained

Rationale: Deputies 5 and 2 denied asking questions or making statements to deliberately antagonize and/or goad the complainant. Witness Deputy 1 initially stated that Deputies 5 and 2 were observed attempting to antagonize and/or goad the complainant, but in a follow-up questionnaire requesting specific actions and/or statements made by the named deputies, he could not recall exact words used by the deputies or specific details related to the incident. Deputy 1 only recalled that both deputies made comments that caused the complainant and his mother to get upset. In the absence of verified statements made by the deputies, there is insufficient evidence to prove or disprove the allegation.

4. False Arrest – Deputy 1 arrested the complainant’s mother on a 5150 cite without cause.

Board Finding: Action Justified

Rationale: Deputy 1 stated that he “feared” that the complainant’s mother was a danger to herself when she climbed onto a wet, slippery roof to escape what she had reported to be 20 armed gunmen, who had allegedly stormed her home seeking the lives of her and her son. The complainant’s father was home at the time of the alleged incident, but denied that any gunmen were present. Pursuant to 5150 H&S, the complainant was arrested and transported to Tri City Medical for a 72 hour evaluation. The evidence shows the alleged act did occur, but was lawful, justified and proper.

5. Misconduct/Discourtesy - Deputies 5 and 2 joked about the complainant’s mother being arrested on a 5150 cite.

Board Finding: Not Sustained

Rationale: Deputies 5 and 2 denied joking about the complainant’s mother being arrested on a 5150 cite. Witness Deputy 1 initially stated that Deputies 5 and 2 were observed joking about the 5150 arrest, but in a follow-up questionnaire, he could not recall specific words stated by either deputy that could have been construed as “joking.” Deputy 1’s only recollection was that both deputies were laughing and making comments that were upsetting to the complainant and his mother. In a follow-up interview with the complainant to clarify this allegation, the “joking” alleged involved smirking on the part of the deputies and their “overall posture.” There is insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Discourtesy – Deputy 3 yelled and cursed at the complainant’s mother stating, “Look lady, stop fucking calling us.”

Board Finding: Not Sustained

Rationale: Deputy 3 denied yelling at the complainant’s mother and making any expletive laced comments toward her. Deputy 4 reportedly witnessed this exchange, but was unavailable for comments due to being currently deployed overseas on military duty. There is insufficient evidence to either prove or disprove the allegation.

10-125

1. False Arrest – Probation Officer 1 arrested the complainant’s son on December 17, 2010 for violating probation.

Board Finding: Action Justified

Rationale: Probation Officer 1, a member of the Jurisdictions Unified for Drug and Gang Enforcement (JUDGE Unit), assisted the National City Police Department in the arrest of the complainant’s son for probation violations. The complainant’s son had failed to register in a specified treatment program, failed to report to scheduled appointments, failed to abstain from the use of alcohol, failed to report to Probation within 72 hours of being release from custody, and failed to report law enforcement contact/arrest within 7 days. CLERB Rules and Regulations Section 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The complainant was referred to National City Police Department for matters concerning National City Police Officers. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Excessive Force – Probation Officer 1 and National City Police Officers knocked the complainant’s son off of his bike and placed a knee into his back to hold him down.

Board Finding: Unfounded

Rationale: Probation Officer 1 denied that any force or compliance holds were necessary to take the complainant’s son into custody. The complainant’s son was given an order to drop his bike, put his hands in the air, and get down on the ground; the complainant’s son complied. The order and the ensuing compliance were observed by an independent witness in the company of the complainant’s son and supported the statement of Probation Officer 1. CLERB Rules and Regulations Section 4.1 Citizen Complaints: Authority. Pursuant to Ordinance #7880, as amended, (Article XVIII, Section 340-340.9 of the San Diego County Administrative Code), the Review Board shall have authority to receive, review, investigate and report on citizen complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The complainant was referred to National City Police Department for matters concerning National City Police Officers. The alleged excessive force did not occur.

3. False Reporting – Probation Officer 2 “lied” when she said she left a telephone message for the complainant’s son ordering him to come in and that he failed to report.

Board Finding: Unfounded.

Rationale: Probation Officer 2 denied stating that she left a telephone message for the complainant’s son to report to Probation. The complainant alleged in her initial complaint that Probation Officer 2 lied about returning a call to her son on or about December 13, 2010. Cell phone records provided by the complaint for the period December 1-31, 2010, failed to reveal any incoming or outgoing calls between the complainant’s son and the Probation Department. On December 13, 2010 Probation Officer 2 attempted to contact the complainant’s son by visiting his address of record; there was no answer at the door and an appointment notice/card were left at the residence notifying the complainant’s son of his December 14, 2010 compliance appointment; the complainant’s son failed to report. The evidence shows that the alleged conduct did not occur.

10-127

1. Excessive Force – Deputy 2 pushed the complainant’s head with “extreme force,” into a patrol vehicle.

Board Finding: Unfounded

Rationale: A witness identified by the complainant did not respond to CLERB’s inquiry for information and Deputies 2 and 3 stated the patrol vehicle was parked outside of view of the apartment. Deputy 2 denied using any force to secure the complainant and Deputy 3 denied seeing this occur. The complainant was medically screened when booked into custody and there was no documentation or evidence of injury. A preponderance of the evidence indicates the alleged act or conduct did not occur.

2. Misconduct/Discourtesy – Deputy 2 told a witness to “mind your own God Damn business!”

Board Finding: Unfounded

Rationale: A witness identified by the complainant did not respond to CLERB’s inquiry for information and Deputies 2 and 3 stated the patrol vehicle was parked outside of view of the witness. Deputies 2 and Deputy 3 denied speaking with the witness after leaving the apartment and disputed using profanity. A preponderance of the evidence indicates the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – Deputies 1, 2 and/or 3 laughed at the complainant in reference to a prior incident involving deputies assaulting him with a nightstick.

Board Finding: Not Sustained

Rationale: The complainant was unable to identify the involved personnel. Deputies 1, 2 and 3 admittedly had contact and/or interaction with the complainant, but all denied the type of behavior described by Thrasher. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 2 told the complainant, “You should think about moving before we run you out of town.”

Board Finding: Not Sustained

Rationale: The complainant stated this conversation occurred at the station between him, Deputy 2 and an unknown female deputy. Deputy 2 said remnants of this conversation occurred during transport while only he and the complainant were present. Deputy 2 denied saying this and instead said that the complainant was the one who initiated the dialogue saying, “You think this is the Wild West and you’re Wyatt Earp. You think you’re going to run me out of town.” There were no recordings or known witnesses to this event, and therefore there is insufficient evidence to either prove or disprove the allegation.

11-003

1. False Arrest – Deputy 2 arrested the complainant for battery.

Board Finding: Action Justified

Rationale: Deputy 2 was dispatched to a reported domestic dispute and arrested the complainant for violation of Penal Code § 243(e)(1), Battery. Deputy 2 reported that the verbal altercation had become physical when the complainant slapped and spit on her ex-boyfriend resulting in her arrest. The evidence shows the alleged act did occur but was lawful, justified and proper.

2. Criminal Conduct – Deputy 3 failed to arrest the complainant’s ex-boyfriend after he struck her with a motorcycle seat resulting in a bruise.

Board Finding: Action Justified

Rationale: Deputy 3 was dispatched to the residence after the complainant had reported that her ex-boyfriend had pushed her off her of motorcycle and taken the motorcycle seat. Deputy 3 and a witness deputy reported that the incident over the motorcycle seat and a computer was verbal only and there had been no evidence of physical confrontation. The motorcycle seat and computer were returned to their respective owners. No arrests were made and the incident was documented as a Domestic Violence Incident in accordance with Penal Code § 137030, Sheriff’s Department Policy 6.97 and Sheriff’s Patrol Manual Policy #33. The evidence shows the alleged act did occur but was lawful, justified and proper.

3. False Reporting – Deputies 2 and 3 incorrectly quoted the complainant and inaccurately reported information in their arrests reports.

Board Finding: Not Sustained

Rationale: Deputies 2 and 3 denied that they submitted inaccurate reports, attesting that the reports were truthful and accurate. The complainant contested statements in the reports that were attributed to her and accounts offered by her ex-boyfriend; however, she offered no evidence to prove that the reports were not truthful and accurate. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure - Deputy 1 permitted the complainant’s ex-boyfriend to ransack their residence while unmonitored.

Board Finding: Action Justified

Rationale: Deputy 1 had been dispatched to the residence by the complainant’s ex-boyfriend to preserve the peace as he retrieved personal property from his residence inhabited by the complainant. As the property owner, the complainant’s ex-boyfriend was entitled access to retrieve personal property. The complainant offered no evidence to demonstrate that the residence was ransacked and there were no reports filed identifying missing, lost, or damaged property. The evidence shows that the alleged act did occur but was lawful, justified and proper.

5. Misconduct/Intimidation – Deputy 1 threatened the complainant with arrest for destruction of personal property.

Board Finding: Action Justified

Rationale: Deputy 1 had been called to the residence to preserve the peace as the homeowner retrieved personal property from the home. The homeowner pointed out to Deputy 1 a number of items that had been destroyed by the complainant but did not desire prosecution. Deputy 1 acknowledged he advised the complainant that if she damaged the homeowner's property and the homeowner desired prosecution, then the complainant was subject to arrest for damages. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Intimidation – Deputy 1 told the complainant, “I can arrest you and make your bail so high you’ll never get out of jail.”

Board Finding: Not Sustained

Rationale: Deputy 1 acknowledged that he advised the complainant that she could be arrested for damaging property, but denied making any statement about bail amounts. There was insufficient evidence to either prove or disprove the allegation.

11-119

1. Misconduct/Procedure – Deputies 1, 2, and 3 suspended the complainant's visitation privileges.

Board Finding: Sustained

Rationale: Deputy 1 Board suspension of visit privileges because of reported disrespectful and disruptive behavior by the complainant. The Sheriff Jail Information Management System (JIMS) reflected that Deputy 2 approved the visit suspension for a period of six months. Deputy 3 later reduced the suspension term to ninety days on October 19, 2011. Detentions Bureau Policy and Procedure P.9, Social Visiting, states that visitor policy violations may result in a 30-day suspension for the first offense; 60-day suspension for the second offense; and revocation of privileges for the third offense. There were no records and minimal documentation of prior violations, therefore the six month suspension exceeded the suspension authority authorized under Department Policy P.9. The evidence supports the allegation and the act was not justified.

POLICY RECOMMENDATION:

It is recommended that San Diego Sheriff's Department direct all detention facility commanders to implement Social Visiting Policies and Procedures consistent with California Code of Regulations Title 15, Section 1062 of Division 1, Crime Prevention and Corrections and Section 3176 of Division 3, Rules and Regulations of Adult Institutions, Programs and Parole, Department of Corrections and Rehabilitation.